

**WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)**  
**Board Meeting**  
**September 23, 2010**

Meeting Began At: 3:04 P.M.

Meeting Ended At: 3:32 P.M.

Members Present: Tim Clare, Jayne Snyder, Chris Beutler,

**Item 1 - Introductions and Notice of Open Meetings Law Posted by Door**

Chair Snyder opened the meeting and advised that the open meetings law is in effect and is posted in the back of the room.

**Item 2 – Approval of the Minutes of the JPA Meeting September 9, 2010**

Snyder asked for any corrections or changes to the minutes from the JPA meeting on September 9, 2010. Hearing none, Clare motioned for approval of the minutes. Beutler seconded the motion. The motion passed 3-0.

**Item 3 – Public Comment and Time Limit Notification**

Snyder stated that individuals from the audience will be given a total of five minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record and sign in.

Dan Marvin came forward and reported that the JPA is in negotiations to enter into a contract with CSL Marketing. Ben Wrigley from CSL was in attendance and Marvin introduced him to the Board. Wrigley has been working in sports marketing for 16 years and has a lot of experience working with municipally owned facilities. The Board welcomed Wrigley to Nebraska.

**Item 4 – Approval of Payment Registers (Herz)**

Don Herz brought forward the payment registers for the weeks ending September 8, 2010 and September 15, 2010. Herz asked if the Board had questions on any specific payments in the registers.

Clare asked about the JPA laptop. Herz explained that it is anticipated that the Assistant City Controller will be doing field work in order to monitor the occupation tax payments. Rather than purchasing a desktop PC they wanted the ability to take it out into the field.

Clare observed that there is a payment to Benesch for survey work in the amount of \$6,500 and further on the agenda, the Board will be asked to approve a contract with Benesch. Clare asked if this work was for something different than that. Herz explained this payment was for architectural work done in June. Jim Martin informed the Board that Benesch, formerly known as HWS, has been doing geotechnical and architectural work since before the creation of the JPA.

Beutler moved for approval of the registers. Clare seconded the motion. Motion approved 3-0.

#### **Item 5 – Review of the August 2010 Expenditure Reports**

Herz created two reports for the Board, the Construction Expenditure Report and the Operating Expenditure Report. Herz will provide these reports to the Board on a monthly basis to show cumulative expenditures versus budgeted amounts. The operating budget will change from year to year but the capital construction budget will remain the same unless revised. As the project progresses Herz may make the reports more sophisticated, however, he wanted to start getting some interim reports to the Board right away.

Snyder asked if the \$242,109 number is the year to date construction total. Herz answered yes and explained that the total is for the period ending August 31, 2010. That is also the case for the operating report.

Beutler moved for approval of the expenditure reports. Clare seconded the motion. Motion approved 3-0.

#### **Item 6 – Bill No. WH 10-03 Resolution to Approve the Third Assignment Assumption Agreement Between the City of Lincoln and West Haymarket Joint Public Agency**

Rick Peo, City Law Department, explained that Bill Number WH 10-03 is a bill to approve the assignment and assumption of four different agreements. Three of these agreements are with Burlington Northern Santa Fe Railroad (BNSF) and the other is with DLR Group.

The three agreements with BNSF include (1) a master agreement, (2) a land exchange agreement and (3) a construction maintenance agreement. These agreements have not been finalized therefore Rick is not recommending approval of those three railroad agreements today. Bill Number WH 10-03 does also include the original city contract with DLR Group for preliminary design of the arena. This first city contract with DLR needs to be formally assigned to the JPA.

The assignment of the original DLR contract needs to be acted upon before the Board votes to approve agenda item 8, which is the first amendment to that original contract.

Due to the consolidation of the four agreements within Bill No. WH 10-03, three of which are were not ready for action, and in order to accomplish the dual purpose of delaying the vote on the BNSF agreements, and the approval of the assignment of the DLR original contract to the JPA, Peo has prepared a Motion to Amend which will divide Bill No. WH 10-03 into two parts.

(1). **WH 10-03A** would be a resolution to approve the assignment and assumption of the three BNSF agreements to the JPA.

(2). **WH 10-03B** would be a resolution to approve the assignment and assumption of the original City contract with DLR.

Peo recommended that the Board do the following: 1). approve the Motion to Amend, which splits WH 10-03 into two separate bills; 2). defer action on WH 10-03A, and 3). adopt WH 10-03B.

Beutler made a motion to adopt Amendment No. 1 to WH 10-03. Clare seconded the vote. Motion approved 3-0.

Peo recommended that Bill No. WH 10-03A be continued to the next meeting as the BNSF agreement has not been finalized.

Clare made a motion to continue Bill No. WH 10-03A to October 8, 2010. Beutler seconded the motion. Motion approved 3-0

Peo then asked that the Board consider adoption of Bill No. WH 10-03B, which is the assignment of the original DLR agreement.

Clare made a motion to adopt Bill No. WH 10-03B. Beutler seconded the motion. Motion approved 3-0.

**Item 7 – Bill No. WH 10-04 Resolution to Approve an Agreement with Alfred Benesch & Company (Formerly HWS) to Provide Geotechnical Engineering Services for the Arena and Parking Garage Structures for the West Haymarket Project**

Peo informed the Board that Bill No. WH 10-04 is a resolution to approve an agreement with Benesch, formerly HWS, to do geotechnical work associated with determining soil needs and stability for construction of the arena and parking garage.

Clare asked if the payment previously approved was for services related to this agreement. Peo explained that this is a new contract that will be entered into directly with the JPA.

Beutler made a motion to approve Bill No. WH 10-04. Clare seconded the motion. Motion approved 3-0

**Item 8 – Bill No. WH 10-05 Resolution to Approve Amendment No. 1 to the Agreement Dated August 14, 2008, Between the City of Lincoln (Assigned to the West Haymarket Joint Public Agency) and DLR Group, Inc. to Provide Architectural Services for the Design of the Arena Improvements for the West Haymarket Project**

Peo reported that Bill No. WH 10-05 is a resolution to approve the final agreement with DLR Group for the construction of the arena. The attachment that was originally provided to the

Board was a preliminary draft. Just this morning, Peo finalized the negotiated changes to this agreement. The changes to the document are not substantial; some details were filled in, some differences were resolved and the exhibits that show the basic services to be performed by DLR were included.

Peo prepared a Motion to Amend which will replace the draft version of Amendment No. 1 with the revised and final version. Peo apologized for the late presentation of the final document. Staff has been pushing hard to complete this agreement and DLR has been waiting a lengthy period of time for a final agreement.

Snyder noted that the total cost of the contract will be about \$8 million and if DLR does the garage work it would add an additional \$800,000. Dan Marvin explained that the contract states that DLR will provide basic design services at a fixed amount of \$8 million. Any additional services such as acoustics, lighting or other analysis would be subcontracted out for an additional \$915,000.

Marvin pointed out that Stan Meredith with DLR Group was present and available to answer questions. Mr. Meredith indicated that DLR will work with whatever the Board decides to do, whether it be to render a vote today or take some time to review the last minute changes and render a vote in a few weeks.

Beutler inquired as to what the nature of the amendments are and if the changes worked towards the City's advantage or the contractor's advantage. Marvin and Peo explained that Exhibit E was added which determines the number of bid specifications that will be prepared under basic services.

Another issue was the amount of insurance that was to be provided. The original proposal indicated that the City would purchase a policy, however it was agreed that the \$5 million professional liability insurance provided by DLR Group would be sufficient.

The Program Manager was identified as the scheduling and cost consultant in the agreement. Other changes filled in missing information and identified differences between Construction Manager at Risk type contracts and general contractor contracts. Peo felt that the changes were fair to both sides. Due to the size of this project, AIA documents are being used which the City doesn't typically work with. In order to incorporate some of the concerns and provisions from the City's standard documents the changes needed to be made.

Snyder asked when the decision would be made about the garages. Meredith stated that in working with Vince Mejer and Dan Marvin, they decided to focus on the arena. A number of the other pieces that were a part of the original agreement were removed; even the parking garage. The parking garage is very important to the design of this facility because it feeds directly into the club and suite level, so it was decided that it would be added at later date by amendment.

Beutler questioned if the amendment changed the total amount of the contract and if it would still be within the original budget. Herz had budgeted a 20% soft cost for the arena that included design, engineering and architectural services. The original contract with DLR was a fee based

percentage of the construction cost of the arena. The \$8 million fee is a reduction from the original contract and is within the budget.

Snyder inquired if work would be held up for two weeks if the Board decided to continue this item until the next meeting. Peo noted that DLR has been without a finalized agreement since the end of the election. Meredith added that they were selected in April of 2008 and they are committed to this project. They are working diligently with the Program Manager and the team that has been brought on board and will continue to do so regardless of whether the amendment is acted on today or not.

Clare made a motion to delay this item to October 8<sup>th</sup>. Beutler seconded the motion. Motion carried 3-0.

**Item 9 – Set Next Meeting Date: Friday October 8, 2010 3:00 P.M.**

The next JPA Board meeting is scheduled for October 8, 2010 at 3:00 P.M.

**Item 10 – Motion to Adjourn**

Beutler motioned to adjourn. Clare seconded the motion. Meeting adjourned at 3:32.

**Prepared by: Melissa Ramos-Lammli, Engineering Services**